

GOODMAN & HURWITZ, P.C.
ATTORNEYS AND COUNSELORS

WILLIAM H. GOODMAN*
bgoodman@goodmanhurwitz.com

JULIE H. HURWITZ
jhurwitz@goodmanhurwitz.com

KATHRYN BRUNER JAMES
kjames@goodmanhurwitz.com

OF COUNSEL
GOODMAN KALAHAR, P.C.

May 20, 2008

HAND DELIERED

Honorable Jennifer Granholm
c/o Kelly G. Keenan, Esq.
Counsel to the Governor
111 S. Capitol Ave,
Lansing, MI 48909

Re; Petition and Charges against the
Honorable Kwame M. Kilpatrick

Dear Governor Granholm,

As you know, the City of Detroit faces an unprecedented crisis, as the Mayor faces felony charges and continues to attempt to govern this City. This is an historic and unique moment for the City of Detroit. For that reason, as well as reasons that are spelled out in detail in the enclosed papers, the Detroit City Council asks that you exercise your authority under MCL 168.327 and undertake a process that can result, if you find it merited, in the Mayor's removal from office.

We therefore enclose the following documents:

1. A "Petition and Charges of the Detroit City Council against Honorable Kwame M. Kilpatrick Seeking his Removal for Acts of Official Misconduct," signed by the Honorable Kenneth V. Cockrel, Jr., President of the Detroit City Council
2. A proof of service of the aforementioned Petition upon the Mayor;
3. An affidavit, attesting to the factual allegations contained in the aforementioned Petition, signed by President Cockrel;
4. A CD containing supporting documents and exhibits, cited and relied upon in the aforementioned petition.

We look forward to hearing from you in the very near future as to your plan for moving forward in this momentous matter. We also greatly appreciate your attention and patience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Will Goodman', with a long, sweeping horizontal line extending to the right.

William Goodman
Special Counsel, Detroit City Council

Goodman & Hurwitz, P.C.
1394 East Jefferson Avenue
Detroit, Michigan 48207
(313) 567 6170
bgoodman@goodmanhurwitz.com

STATE OF MICHIGAN
IN THE OFFICE OF THE HONORABLE JENNIFER GRANHOLM
GOVERNOR

In Re:

Petition and Charges of the Detroit City Council

Against

Honorable Kwame M. Kilpatrick
Seeking His Removal for Acts of Official Misconduct

NOW COMES Detroit City Council and, for its Charges, does hereby allege as follows:

PRELIMINARY STATEMENT

1. The Detroit City Council (hereafter "Council") is the legislative branch of the City of Detroit Government.
2. Council has determined that Mayor Kwame M. Kilpatrick has engaged in conduct that constitutes "official misconduct," within the meaning of MCLA §168.327, thus meriting removal for cause from elective office.
3. On March 18, 2008, after the public disclosure of evidence of said misconduct, but before Council's Public Hearing, Council passed a Resolution, (attached hereto as **Exhibit A**), seeking the resignation of Mayor Kilpatrick.
4. On May 13, 2008, after a three-day Public Hearing, where witnesses testified under oath, and after issuance of the Special Counsel's Report, (**Exhibit A**), Council passed a

Resolution, (Exhibit C), censuring and condemning the conduct of Mayor Kilpatrick, and on the same date, passed a Resolution, (Exhibit D), to adopt the Special Counsel's Findings of Fact contained in his Report (Exhibits E, F and G).

5. The Honorable Jennifer M. Granholm, (hereafter "Governor"), is authorized pursuant to powers granted to the Office of the Governor by, the State of Michigan Constitution of 1963, Article VII Section 33, as codified by Chapter 168 of the Michigan Election Law, MCL §168.327, to remove any elected city officer "...when the governor is satisfied from sufficient evidence submitted to the governor that the officer has been guilty of official misconduct."

6. In this instance, based on the evidence of such misconduct by Mayor Kwame. M. Kilpatrick, the Governor is required to and should remove Mayor Kwame. M. Kilpatrick from elective office.

FACTUAL STATEMENT

7. On September 11, 2007, a Wayne County Circuit Court jury returned a verdict in a whistleblower case styled *Gary Brown and Harold Nelthrope v. Kwame Kilpatrick, Mayor, City of Detroit and the City of Detroit*, Wayne County Circuit Court Case No. 03-317557-NZ. The verdict was adverse to the defendants, including Mayor Kwame M. Kilpatrick, in the amount of \$6.5 million, not including interest or attorneys fees.

8. Immediately after the verdict, Mayor Kilpatrick and the City of Detroit Corporation Counsel, along with the private outside counsel, hired to represent Mayor Kilpatrick and the City, took the position that there would be an appeal and no settlement of the case, as forcefully

represented to Council in a closed executive session on September 19, 2007. (Exh. H, Transcript, in particular p. 9, lns. 7 – 12, p. 23, lns 1 – 14)

9. On October 17, 2007 a court ordered post-trial 'attorney fee facilitation' was held and, after several hours, the Plaintiffs' counsel Michael Stefani, attempted to broaden it into a negotiation for a "global settlement," which was initially rejected by the City's and the Mayor's attorneys. (Ex. E, p. 43, 199, Ex. F, pp 16, 149)

10. During that October 17th facilitation, after the initial rejection of a "global settlement," Mr. Stefani, produced a new 'brief,' *Plaintiffs' Supplemental Brief in Support of Their Motion for Attorney Fees and Costs*, (Exh.I, Stefani "Brief") yet unfiled and incomplete. This new brief contained excerpts and complete messages from text messages exchanged between Mayor Kilpatrick and his Chief of Staff, Ms. Christine Beatty that could prove that the prior sworn testimony of both Mayor Kilpatrick and Ms. Beatty was false. (Ex. E, pp 44-47, 201-202; Ex. F, pp 22-27)

11. Mayor Kilpatrick was contacted by his attorney about the brief disclosing the text messages and within two hours, at the very most, the *Brown/Nelthrope* case was settled for \$8 million. In addition, a related whistleblower case, that of *Walter Harris v. Kilpatrick, et al*, Wayne County Circuit Court Case No. 03-337670-NZ, was settled for \$400,000 at the same time. (Ex. E, pp 52-53, 76, 217; Ex. F, pp 154- 156; Ex. G, pp 189-190)

12. The original "Settlement Agreement," dated October 17, 2007, (Ex. J, #3) and signed by both attorney Valerie Colbert-Osamuede and outside special counsel Mr. Wilson Copeland on behalf of the City, and by Mr. Samuel McCargo and Ms. Valerie Colbert-Osamuede on behalf of Mayor Kilpatrick, included both the strict confidentiality terms that

compelled the secrecy of the text messages *and* the monetary terms, as set forth in Paragraph 11, above.

13. The October 17 "Settlement Agreement" included a provision that only the monetary portion was to be presented to Council and the confidentiality portion was to be withheld. (Ex. J, #3, ¶ 8, "the *monetary* terms of the settlement must be approved by the ... city council...."; and particularly Ex. K, ¶ 8) That evening and/or the following morning, the City of Detroit Law Department prepared a "Lawsuit Settlement Memorandum" (Ex. J, # 12) that recited the monetary terms of these settlements. It recommended settlement for those monetary but failed to disclose the confidentiality and secrecy provisions, in its recommendation.

14. Further, on October 18, 2007, the Corporation Counsel and Ms. Colbert-Osamuede specifically requested authorization from the Council (Ex. J, # 4, p. 5) to settle the *Brown/Nelthrope* case for \$8,000,000 and the *Harris* case for \$400,000 again failing to disclose the confidentiality and secrecy provisions that were an intrinsic part of the settlement.

15. The settlement, the "Lawsuit Settlement Memorandum," and the request for authorization were rushed before the Internal Operation Committee, (hereafter "Committee"), of the Council by the City of Detroit Law Department on October 18, 2007. At that time, pursuant to the October 17 "Settlement Agreement" reached by the attorneys for all the parties, including the City of Detroit, *only* the monetary terms were brought to the Committee. (Ex. F, pp. 166-67)

16. Thereafter, the settlement was forwarded by the Committee to the entire Council, without recommendation. On October 23, 2007, the entire City Council approved the settlement based on no information, other than what was provided to the Committee, namely the "Lawsuit Settlement Memorandum" and the request for authorization both of which failed to disclose

either the existence or the terms of the confidentiality and secrecy portions of the "Settlement Agreement."

17. On October 23, 2007, Council passed Resolutions in both cases, authorizing settlement in the amounts set forth above and authorizing the Finance Director to draw warrants in these amounts to be paid to the Plaintiffs and their attorneys. (Ex. J, #4, p.6)

18. There was, therefore, never any disclosure of the confidentiality terms to the Council, when the Mayor sought its consent to the settlement, despite the fact that the confidentiality provisions constituted material, indeed critical, terms and conditions of the settlement.

19. Further, the case would not have been settled without these confidentiality provisions. (Ex. L, p.8)

20. One day after the settlement was first brought to Council, on October 19th, the Detroit Free Press filed a FOIA request asking for the "entire settlement agreements" in the *Brown/Nelthrope/Harris* cases. (Ex. J, #13)

21. As a result of this FOIA request, an elaborate scheme was undertaken on behalf of Mayor Kilpatrick to prevent public disclosure of the settlement, and particularly to protect Mayor Kilpatrick from disclosure of the existence of either the text messages or the Confidentiality Agreement. (Ex April 08, pp 62-63, 230; Ex April 10, pp 37-38, 55-56) This scheme involved the following:

- a. The Council's formal *approval* on October 18th of the monetary terms, i.e. \$8.4 million to settle the cases; (Ex. F, pp. 166-67)
- b. The Mayor's formal *rejection* on October 27th, unbeknownst to Council, of the terms of the October 17th version of the settlement, that contained both monetary and confidentiality terms. This October 27th rejection was

prepared in the form of a legal pleading, and signed only by Mayor Kilpatrick and not by any attorney; (Exhibit J, #5)

- c. The Detroit Law Department's denial, on October 29th, of the October 19th FOIA request. This denial was based upon the Law Department's assertion that the terms of the settlement had not yet been worked out; (Ex. J, # 14)
- d. The subsequent creation, on November 1st, of two "new" agreements, one, monetary and the other, "confidential," to replace the earlier unitary agreement dated October 17th. The "Monetary Agreement" (Ex. J, #8) is clearly intended to be a public document and, as such, was signed by the attorneys. The "Confidentiality Agreement," (Ex. J, #9) on the other hand, purported to be "private" and "individual and personal," signed by only by "Kwame Kilpatrick," "Christine Beatty" and "Michael Stefani," and was to be overseen only by Mayor Kilpatrick's private attorney, Mr. Mitchell;
- e. The "Approval" of the settlement by Mayor Kilpatrick, also dated November 1st, four days after his October 27th "Rejection." As with his rejection, the Mayor's approval was also prepared in the form of a legal pleading; (Ex. J, #6)
- f. Both the rejection and the approval were captioned as a legal pleading; both were prepared by the Mayor's lawyer; both were written by Mr. McCargo presented to Mr. Stefani on the same date; neither was signed by any of the Mayor's lawyers. (Ex. F, pp. 62-75)
- g. On October 29th, a new response was presented to the Free Press FOIA request. This response disclosed *only* the monetary agreement, now "cleansed" of its previous confidentiality provisions. (Ex. J, #14)

22. Mayor Kilpatrick deliberately authorized, and subsequently ratified, the above described scheme, deliberately designed to prevent the Council from obtaining knowledge of critical confidentiality and secrecy terms and conditions of the *Brown/Nelthrope/Harris* settlement. He did so for personal reasons: to prevent disclosure of his false testimony; to prevent disclosure of his personal relationship; and to prevent disclosure that *public* funds were expended to accomplish the concealment of *private* matters.

23. Further an obligation to settle these cases was incurred and a payment authorized as a part of that settlement, in violation of provisions of the Detroit City Charter, specifically Sections 2-106 and 6-403.

24. Council further incorporates by reference, the findings of fact in the Special Counsel's Report dated May 5, 2008 (**Exh. B**) and adopted by this Honorable Body pursuant to Resolution, on May 13, 2008, (**Exh. C**), attached as Exhibits to this Statement of Charges.

CHARGE I - USE OF PUBLIC OFFICE FOR PRIVATE GAIN

25. Council incorporates by reference paragraphs 1-22, above.

26. Section 2-106 of the Detroit City Charter prohibits the "use of public office for private gain."

27. The "use of public office" includes, but is not limited to:

- a. The use of the services of the City Law Department and independent counsel paid for with public funds, as well as access to the City's funds to pay for the *Brown/Nelthrope/Harris* settlements;
- b. The use of the services of the City Law Department, and its attorneys, that *purportedly* acted as attorneys for the Council but, in *fact* and in secrecy, acted against the interests of the Council, its client, in that it was compelled by the Mayor to conceal information from the Council, in furtherance of the personal and private interests of the Mayor; and
- c. The use of the powers of his office, both directly and indirectly, through his control of the Law Department, to negotiate, recommend, authorize, implement and pay to settle a lawsuit, regardless of whether that settlement was in the best interests of the City of Detroit and its residents;

28. The "private gain" was that Mayor Kilpatrick used his public office, as set forth above in Paragraph 26, to circumvent the law and avoid personal embarrassment and possible

criminal liability, all of which was in his personal and private interest but did not benefit the public interest.

29. The actions of the Mayor, as set forth above, violated Section 2-106 of the Detroit City Charter, and constitute "official misconduct" within the meaning on MCL 168.327, thereby requiring that he be removed from his elected office, pursuant to the Governor's authority under Article VII, §33 of the Constitution of the State of Michigan.

WHEREFORE, the Detroit City Council respectfully asks that the Governor of the State of Michigan employ the mandated powers vested in her by Article VII, § 33 of the Constitution of the State of Michigan and Michigan Statutes, MCL 168.327 to remove the Honorable Kwame M. Kilpatrick from his office as the Mayor of the City of Detroit.

**CHARGE II- SETTLEMENT OF CIVIL LITIGATION OF THE CITY
WITHOUT THE CONSENT OF THE CITY COUNCIL**

30. Council incorporates by reference paragraphs 1-28, above.

31. Section 6-403 of the Detroit City Charter prohibits the settlement of any civil litigation without the consent of the Council.

32. The Mayor, acting through the Law Department, sought the consent of the Council to the *Brown/Nelthrope/Harris* settlements by deliberately concealing from Council material terms and conditions of those settlements, specifically the existence of the text messages and the confidentiality provisions of the settlements.

33. As a result, the consent that was obtained was not informed consent and, therefore, not authentic consent. As a consequence, there was no valid consent, to the settlement that the Mayor undertook and brought to fruition.

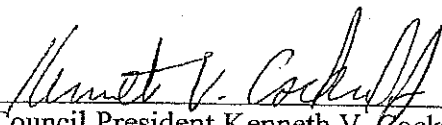
34. Therefore, the Mayor used the powers of his office to settle these cases without the consent of Council, in violation of Section 6-403 of the City Charter. As such he engaged in official misconduct, within the meaning of MCL 168.327.

WHEREFORE, the Detroit City Council respectfully asks that the Governor of the State of Michigan employ the mandated powers vested in her by Article VII, § 33 of the Constitution of the State of Michigan and Michigan Statutes, MCL 168.327 to remove the Honorable Kwame M. Kilpatrick from his office as the Mayor of the City of Detroit.

RELIEF REQUESTED

For all the reasons stated above, and for any other reason the Honorable Governor Jennifer M. Granholm deems fit, the Detroit City Council requests that Mayor Kwame M. Kilpatrick be **REMOVED** from elective office pursuant to the Constitutional and statutory powers granted to the Office of Governor of the State of Michigan.

Dated: May 20, 2008




Council President Kenneth V. Cockrel, Jr.
*Individually and in his representative capacity
on behalf of the Detroit City Council*

CERTIFICATE OF SERVICE

I hereby certify that on or by **20 May 2008**, I served the foregoing *Petition and Charges of the Detroit City Council Against Honorable Kwame M. Kilpatrick Seeking His Removal for Acts of Official Misconduct* by hand on the Honorable Kwame M. Kilpatrick, pursuant to stipulation and agreement with his attorney, James C. Thomas, at the following location:

James C. Thomas (P23801)
535 Griswold St., Ste 2632
Detroit, MI 48226
(313) 963-2420

A handwritten signature in black ink, appearing to read 'Will H. Goodman', written over a horizontal line.

William H. Goodman (P14173)
Goodman & Hurwitz, P.C.
1394 E. Jefferson Ave.
Detroit, MI 48207
(313) 567-6170
(313) 567-4827
bgoodman@goodmanhurwitz.com

**AFFIDAVIT OF THE HONORABLE KENNETH V. COCKREL, JR., PRESIDENT,
DETROIT CITY COUNCIL**

STATE OF MICHIGAN)
WAYNE COUNTY)

Kenneth V. Cockrel, Jr., being sworn, says:

1. I am a member and President of the Detroit City Council, and as such a duly elective public official of the City of Detroit.
2. I have reviewed the document entitled "*In Re: Charges of the Detroit City Council Against Honorable Kwame M. Kilpatrick Seeking his Removal for Acts of Official Misconduct*"
3. Based upon my direct experience, personal knowledge and information and belief, I represent that the statements contained therein are true.
4. This affidavit is filed in conformity with MCL 168.327.

s/ Kenneth V. Cockrel, Jr.

Subscribed and sworn to before me on 20th May 2008

/s/ Kimberly Louise Werner

Notary Public Name

Notary public, State of Michigan, County of WAYNE

My commission expires 07/26/2011